



STATE OF NEW YORK

**UNEMPLOYMENT INSURANCE APPEAL BOARD**

PO Box 15126

Albany NY 12212-5126

**DECISION OF THE BOARD**

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Mailed and Filed: JUNE 03, 2022

IN THE MATTER OF:

Appeal Board No. 621788

PRESENT: RANDALL T. DOUGLAS, MEMBER

In Appeal Board Nos. 621744 and 621788, the Commissioner of Labor appeals from the combined decisions of the Administrative Law Judge filed February 18, 2022, which sustained the Commissioner of Labor's timeliness objection and continued in effect the initial determination disqualifying the claimant from receiving benefits for twelve months, effective November 8, 2018, on the basis that the claimant lost employment as a result of an act constituting a felony in connection with that employment; and overruled the Commissioner of Labor's timeliness objection and the initial determination charging the claimant with an overpayment of \$2,155 in benefits recoverable pursuant to Labor Law § 597

(4).

At the combined telephone conference hearing before the Administrative Law Judge, all parties were accorded a full opportunity to be heard and testimony was taken. There were appearances by the claimant and on behalf of the employer.

In Appeal Board No. 621744, it now appears that the appeal was processed through inadvertence. Since the Judge's decision is not adverse to the appellant's interest, the appellant has no standing to appeal from that decision.

Now, based on all of the foregoing, it is

ORDERED, that the appeal in Appeal Board No. 621744 is dismissed; and it is further

ORDERED, that in Appeal Board No. 621744, the decision of the Administrative Law Judge continues in effect.

In Appeal Board No. 621744, the claimant is denied benefits with respect to the issues decided herein.

In Appeal Board No. 621788, we have reviewed the entire record and have considered the testimony and other evidence. It appears that no errors of fact or law have been made with respect to the decision overruling the Commissioner of Labor's timeliness objection with regards to the recoverable overpayment determination. The findings of fact and the opinion of the Administrative Law Judge, insofar as it overrules the Commissioner of Labor's timeliness objection with regards to the recoverable overpayment determination, are fully supported by the record and, therefore, are adopted as the findings of fact and the opinion of the Board.

Our review of the record, however, reveals that the case should be remanded to hold a hearing concerning the recoverable overpayment determination. The Board has determined to provide the Commissioner of Labor another opportunity to submit additional testimony and other evidence on the recoverable overpayment determination. Specifically, the Commissioner of Labor shall produce a witness to testify regarding whether the claimant received the \$2,155 in unemployment insurance benefits for the period from week ending March 3, 2019, through week ending April 7, 2019. The claimant should provide his bank records for the period from week ending March 3, 2019, through week ending April 7, 2019. If the claimant's bank records for this period are outside of his control, the claimant may apply to the Judge for a subpoena to obtain such evidence. The request for a subpoena should be made as soon as possible following receipt of this decision. The request should be made to the following hearing office:  
Unemployment Insurance Appeal Board, ALJ Section; 120 Bloomingdale Rd, Rm 233;  
White Plains NY 10605-1501.

DECISION: In Appeal Board No. 621788, the decision of the Administrative Law Judge, insofar as it overruled the Commissioner of Labor's timeliness objection, is affirmed.

In Appeal Board No. 621788, the decision of the Administrative Law Judge, insofar as it overruled the initial determination of recoverable overpayment, is rescinded.

In Appeal Board No. 621788, the Commissioner of Labor's timeliness objection is overruled.

Now, based on all of the foregoing, it is

ORDERED, that the case shall be, and the same hereby is, remanded to the Hearing Section to hold a hearing on the issue of recoverable overpayment, only, upon due notice to all parties and their representatives; and it is further

ORDERED, that the Notice of Hearing shall identify as the Purpose of Hearing the remanded issue of recoverable overpayment, only; and it is further

ORDERED, that the hearing shall be conducted so that there has been an opportunity for the above action to be taken, and so that at the end of the hearing all parties will have had a full and fair opportunity to be heard; and it is further

ORDERED, that an Administrative Law Judge shall render a new decision, on the remanded issue of recoverable overpayment only, which shall be based on the entire record in this case, including the testimony and other evidence from the original and the remand hearings, and which shall contain appropriate findings of fact and conclusions of law.

RANDALL T. DOUGLAS, MEMBER